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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

FRANK B. HUBBY

Petitioner,

vs.

THE HISTORIC SAVANNAH FOUNDATION

GEORGIA SEMIQUINCENTENARY COMMISSION,

MR. B. H. LEVY, CHAIRMAN,

GEORGIA ENDOWMENT FOR THE HUMANITIES

Respondents

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals

For the Eleventh Circuit

Frank B. Hubby, M.D.
propria persona
321 East Hall Street
Savannah, GA 31401
(912) 232-5511

137pp

QUESTIONS PRESENTED FOR REVIEW

1. Will a significant error by the Eleventh Circuit Court of Appeals in a First Amendment case tend to damage the First Amendment?

2. Is it constitutional for a District Court to hold a "bench trial" on the issues of ultimate fact in a First Amendment case and rule against the non-movant who had demonstrated many facts tending to show that a First Amendment forum had been constructed and improper restraint had taken place?

3. What is the standard which the non-movant has to achieve in order to survive Summary Judgement in a First Amendment case on the issue of ultimate fact of the construction of a First Amendment forum?

4. What is the standard which the non-movant has to achieve in order to survive Summary Judgement in a First Amendment

case on the issue of ultimate fact of the presence of state action in a forum and in improper restraint which occurred there?

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GEORGIA ENDOWMENT FOR THE HUMANITIES

Respondents

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals

For the Eleventh Circuit

Petitioner prays that a writ of certiorari issue to review the judgement

of the United States Court of Appeals for the Eleventh Circuit entered in the entitled case on June 12, 1984.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unreported. The opinion is set forth in the Appendix at pages A12 and A13.

The opinion of the United States District Court for the Southern District of Georgia, Savannah Division, is unreported. The opinion is set forth in the Appendix at page A15.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S.C., Section 1254.

CONSTITUTION AND STATUTES INVOLVED

United States Constitution

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 U.S.C. § 1983

Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a

statute of the District of Columbia. As amended Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

STATEMENT OF THE CASE

Alleging that he was improperly restrained at a public meeting on February 7, 1983, which was in part a pageant and in part a colloquium on the development of Savannah and of the State of Georgia during the 250th celebration of the birth of the state, the Petitioner applied to the United States District Court for the Southern District of Georgia for a Temporary Restraining Order. He asked for the temporary suspension of the celebrations so that before they ended, he might have an opportunity of speaking at a forum connected with them. He was denied on February 12, 1983, and the District Court was upheld by the United States Court of Appeals for the Eleventh Circuit and the United States Supreme Court (Justice

Powell) on March 3, 1983.

The Petitioner asked the Court for broad relief and requested a trial by jury on the issues.

The Respondents, who sanctioned, funded, sponsored, and to varying degrees controlled the town meeting, moved for dismissal for failure to state a claim. This motion was denied May 2, 1983. The Petitioner moved to amend his complaint so as to add a count under 42 U.S.C.A. Section 1983 and leave was so granted. He moved to amend to add Mr. B. H. Levy, the Chairman of the Georgia Semiquincentenary Commission, as a Respondent. Leave was so granted. (Appendix, pages A32, A33)

The Georgia Semiquincentenary Commission moved for summary judgement on August 23, 1983, claiming that the town meeting was a simple pageant, that the Commission made no decision with regard to management of the meeting, that the

Commission had no control over any errors which might have occurred there, and that injunctive relief should not be granted absent proof of affirmative involvement.

In response, the Petitioner showed the Court that the town meeting was a highly complex colloquium which invited philosophical statements, comments, rhetorical questions, and that any topic of importance to the general public could be broached. The Petitioner documented an unprecedented and extremely close relationship between the state commission and the private party in control of the meeting which made them, in the words of one commissioner, "one in the same."

Summary judgement in favor of the Respondents was granted November 23, 1983. The Eleventh Circuit affirmed per curiam May 2, 1984, and denied Petitioner's suggestion for rehearing en banc June 12, 1984.

STATEMENT OF FACTS

A. The Town Meeting. The Historic Savannah Foundation, a private organization, has for several years co-sponsored an educational device in the schools called a "Town Meeting" Assembly. As part of the 250th celebrations, HSF arranged to invite the general public to this meeting.

The town meeting which took place February 7, 1983 was based upon the format used in the schools. The town meeting has two components: the first a historic enactment involving several colonial characters, the second a spontaneous response by the public reflecting upon what they had heard and relating it to modern life. The public was invited to do any one of a number of things including the giving of philosophical statements. (Appendix, page A35)

The format of the town meeting is that of assembly and discussion.

Questions were going to be planted amongst the public February 7, 1983 in order to get spontaneous, unedited discussion going. (Appendix, page A42)

In a newspaper announcement of the town meeting, written by the Project Director, the most important modern political questions were placed on the agenda for consideration by the public: where have we been, how did we get here, how can we make our city better in the future? (Appendix, page A43)

The town meeting was an "official" event of the Semiquincentenary Commission and the only official event of the Semiquincentenary Commission providing such open and unrestrained public participation. (Affidavit by Commissioner Betty Ellington - Appendix, page A45)

Public comments were to be governed by "no rules." Citizens could make comments, ask rhetorical questions, engage in

dialogue, and even question the Mayor of Savannah on modern controversial topics. A real bona fide public discussion was allowed. (Deposition of Ms. Kacey Jones, Project Director of Town Meeting; filed with the Court June 12, 1983 - Appendix, pages A47-A52)

Intending to discuss the problem of political corruption in Savannah and the laundering of drug money in coastal Georgia, the Petitioner inquired whether a citizen could take the podium at the appropriate time and address the public concerning his views on how Savannah had developed. He was told by the Project Director in charge that such participation was welcome. He again inquired on the afternoon of February 7, 1983. "That is exactly what we are looking for." (Petitioner's testimony at T.R.O. Hearing, February 12, 1983)

Based upon "speculative apprehension" because he would not review his remarks with the officials in charge before the meeting,

a decision was made later, prior to his arrival, to cancel the public participation part of the meeting and not to allow the Petitioner to speak before the public. (Deposition of Ms. Jones - Appendix, pages A53-A56)

The Petitioner arrived at the town meeting and was told that "everything had changed," and he could not speak. But if he wished, he could "ask a question" in the lobby when the meeting was over. (Petitioner's testimony at T.R.O. Hearing, February 12, 1983)

He was later informed by the President of the Historic Savannah Foundation that he was restrained on account of the rumor that he wanted to talk about "drugs." At the time the Petitioner was restrained, no official had any idea what he was going to say. (Deposition by Ms. Jones - Appendix, pages A57-A59)

Two members of the public at the town meeting attest that the public part of the

meeting was summarily cancelled. (Appendix, pages A60 and A62)

The Mayor of Savannah, nonetheless, was allowed to make unedited, unrehearsed comments on the state of Savannah in 1983 and the city's plans to go ahead with the restoration of a certain square. (Appendix, page A65)

A member of the Commission, Mike Vaquer, attests that what was originally planned on February 7, 1983 was an "open town meeting." (Appendix, page A67)

The Executive Director of the Georgia Endowment attended the town meeting, witnessed the cancellation of the public part of the meeting abrogating the contract between Historic Savannah and the GEH, and was in a position to take corrective action. He did not. (Petitioner's testimony at T.R.O. Hearing February 12, 1983; Appendix, page A70)

B. State Involvement. The celebrations

of the birth of Georgia have been under the aegis of Historic Savannah. For the 250th year, at the behest of the Savannah Legislative delegation--a member of which is a member of Historic Savannah--a state body was created by the Legislature. Of 25 members, ten are from Savannah and half of the Savannah members are members of Historic Savannah. (Appendix, pages A74 and A76)

Of the three most controlling members of the Commission, Chairman Levy and Preston Russell are members of Historic Savannah. The Executive Director of Historic Savannah was on the Commission.

The state celebration was two-tiered. The Savannah celebration, which was the highlight of the state program, was run by the Commission and Historic Savannah jointly, serving under the guidance of Commissioner Russell. (Appendix, pages A77 and A78)

The restoration of a certain square, of interest to the Commission and Historic Savannah, was brought onto the agenda of the town meeting on February 7, 1983. (Appendix, page A80)

The Commission had been involved with the town meeting from the very first meeting of the Commission. The town meeting received "official" designation from the Commission. (Appendix, page A81) The Commission printed the prospectus of the town meeting. Commissioner Levy and Russell helped to arrange funding for the town meeting by the Georgia Endowment of the Humanities with whom the Commission was contracted. (Appendix, pages A82 and A83)

The Georgia Endowment for the Humanities established a special funding category for events designated by the Commission, a category under which Historic Savannah was awarded monies, in part for

this town meeting. (Appendix, page A84)

Commissioner Vaquer coordinated the events of the Savannah celebration with Historic Savannah; chaired the screening and finance committees of the Commission which passed on Historic Savannah's application; participated in the town meeting on February 7, 1983 and critiqued it to satisfy a funding requirement of the GEH.

Commissioner Ellington testifies that for the purpose of the Savannah celebrations, the Commission and Historic Savannah were "one in the same." (Appendix, page A86)

REASONS FOR GRANTING THE WRIT

1. IT IS IN THE INTEREST OF THE FIRST AMENDMENT THAT SUMMARY JUDGEMENT NOT STAND IN THIS FIRST AMENDMENT CASE.

In passing on the errors of the District Court in granting summary judgement in this controversy, the United States Court of Appeals for the

Eleventh Circuit has offered up a tremendous constitutional anomaly in opposition to the whole of First Amendment law.

Bringing the New York Times Co. v Sullivan principle of independent review in consonance with Rule 52 (a) of the Federal Rules of Civil Procedure, the First Circuit ruled that it must perform a de novo review of the facts in cases in which to do otherwise might tread upon the constitutional right of the freedom of expression--in Bose Corp. v Consumers Union 80 L Ed 502 (1984). The Second Circuit Court of Appeals struck down a New York State Fair regulation restricting a religious practice of the Krishna religion of prostelyzing and soliciting non-believers. The Second Circuit held the practice is protected under the First Amendment, and that the state regulation in question was not properly tailored to meet the legitimate needs of the state. Intern. Soc.

for Krishna, Etc. v Barber 650 F. 2d 430 (1981) The Third Circuit Court of Appeals set forth the application of 42 U.S.C.A. to the abridgement of First Amendment rights in Paton v La Prade 524 F 2d (1975). The Seventh Circuit Court of Appeals set back summary judgement in a controversy involving a university professor's claim that he had been terminated for criticizing certain university policies. Upon review, the Seventh Circuit found that the testimony "is sufficient to at least raise an inference that the plaintiff was discharged for his criticism of his employers." Eichman v Ind. State Univ. Bd. Trustees 597 F. 2d 1104 (1979) at 1109.

Had the United States Court of Appeals for the Eleventh Circuit thoroughly examined the record in a light at all favorable to the Petitioner, had the Court balanced the competing interests and rights at the town meeting, the Court would have found that

the Petitioner was protected by the First Amendment to stand at the appropriate time and ask the simplest and least offensive question. The Court would have had to conclude that the evidence "is sufficient to at least raise an inference" that the Petitioner was denied that right, not because his right was in conflict with the rights of others, but because the officials wanted to prevent his views, whatever they were, from reaching the public.

The error of the Eleventh Circuit tends to certify that at a state-sponsored public meeting, prior restraint of a speaker on the basis that he might be controversial is perfectly proper, a decision which will not find much of a home in any First Amendment law as it has been developed from Hague v C.I.O. 307 U.S. 496 (1939) to Bose Corporation v Consumers Union, supra, and the Court becomes a party to an unconstitutional suppression.

There is not much point in citizens

bringing the denial of basic constitutional rights to the federal courts if the facts are not examined with scrupulous care. The findings of the construction of a First Amendment forum and of improper restraint depend upon a careful examination of all of the particulars: in the totality of things was there an invitation to the public to come to a certain place or forum for the purposes of expressing ideas? Was the communication of ideas at that place in harmony with the primary purpose of it? Was the restraint imposed applied in the interest of preserving the primary purposes of the place, or was it imposed for the purposes of suppressing a particular speaker or a particular idea?

States will always associate for all sorts of purposes with private parties. Governments will enter themselves the marketplace of ideas and from time to time

attempt to restrict the range of opinion in forums called for specific purposes. Because intolerance and the tendency to limit and censure uncomfortable ideas is deeply set within human institutions, controversies of the kind played out here will be played out ad infinitum, and ideas and speakers will be suppressed.

"...in the nature of things every such suppression raises an individual constitutional problem"--Justice Harlan in Roth v United States 354 U.S. 476 (1957) at 497. The suppression of a particular idea is more than of academic importance to the speaker; it becomes a problem for the First Amendment and the democracy as well.

This Petitioner belongs to a class of citizens whose views at a given time and at a given place may not be popular and may indeed be quite uncomfortable. These are the "pains" of society whose

ideas, not acceptable today, may be commonplace and useful to the democracy tomorrow.

Who is to know whether this particular speaker and his idea, and other speakers and their ideas, similarly suppressed in controversies of a similar kind, will or will not contribute to the growth of democracy and the search of truth, the purposes of the First Amendment?

The Supreme Court affords the highest level of constitutional protection to pure speech at simple classic forums or at complex, unconvention, difficult forums quite hostile to the ideas of the speaker, as in this case. If a speaker does not enjoy First Amendment rights at an "open town meeting," then the First Amendment can not mean very much in that or in any other jurisdiction in the democracy. Attempting to contribute to the democracy, it is incredible that this Petitioner has been put through an eighteen month paper chase

to secure a basic constitutional right.

The Supreme Court ensures that if the First Amendment is to serve the purpose of the democracy, it must have the same meaning in every geographic part of the democracy.

2. THE DECISIONS BELOW CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT ON SUMMARY JUDGEMENT IN FIRST AMENDMENT CASES.

1.

The Issues of Ultimate Fact

The Georgia Semiquincentenary Commission and MR. B. H. Levy, Chairman of the Commission, moved for Summary Judgement, claiming five (5) material facts as to which there is no genuine issue to be tried.

In response the Petitioner submitted affidavits, testimony and documents contesting the truth of the "factual" assertions of the Respondents. The Petitioner filed with the Court, to expedite an analysis of the controversy, the "Status of the Case" summary. He showed in what fashion the assertions of the Respondents

had been narrowly drawn. The truth of the matter has to be sought in the understanding of the controlling issues of fact and law bound inextricably with each other. What was the totality of circumstances which may have created state action through the relationship of the state body and the private party in more immediate control of the town meeting? To what degree did the involvement of the state enhance all of the other factors creating First Amendment rights at the forum constructed by the Respondents? Was the restraint imposed upon the speaker intolerable under the Constitution? These were the genuine issues, the issues of ultimate fact.

The Petitioner concedes that the issues of First Amendment rights and state actions have to be decided by the courts. The issue of improper restraint may be reserved for a trial by jury, the issue

appropriate for jury determination.

In cases involving prior restraint, the Respondents must show that the restraint was carefully tailored to the nature of the forum, and that time, place, manner and content regulations were not imposed to accomplish censorship. The preponderance of evidence before the Courts is that the Petitioner was restrained only because the officials worried he might be controversial.

2.

The Errors of the District Court

"...the question whether summary judgement is appropriate in any case is one to be decided upon the particular facts of the case." First National City Bank v Cities Service, 391 U.S. 253 (1968) at 259.

If the District Court intended to pierce the pleadings to reach a conclusion on the issues of ultimate fact, the crux

of the inquiry came down to whether First Amendment rights had been established at the town meeting. The test had to be through a thorough examination of the record.

The Petitioner showed the Eleventh Circuit these errors of fact finding by the District Court:

1) The District Court chose to ignore the prospectus of the town meeting inviting "philosophical statements." The Court chose to ignore the Petitioner's testimony at the T.R.O. Hearing to the effect that he had inquired of time, place and matter regulations, solicited and received permission to give a "statement" at the appropriate time concerning his views on the evolution of Savannah.

"That's exciting...that is exactly what we are looking for," was the reply of the official in charge. The Court chose to ignore the deposition of that

official showing the public part of the meeting had "no rules;" the public could do and say what they wanted: ask questions, get into public debate and discussion, and even question the mayor on the most controversial of topics.

The Court chose to ignore that evidence from one of the state commissioners participating in the town meeting to the effect that the meeting was supposed to be an "open town meeting." The District Court then ruled as if the facts relevant to the construction of a public colloquium simply did not exist. The Court did not think that a public meeting for the exchange of ideas had been created so a public meeting for the exchange of ideas was not created, no matter what the facts were.

2) The District Court failed to understand what occurred when the Petitioner arrived at the town meeting. The

Petitioner shows in sworn testimony that the decision to restrain him and to cancel the public part of the meeting was made prior to his arrival, before the officials had any idea what he was going to say. It was only after being restrained, in the desire to be allowed to speak at the next meeting, that the Petitioner left a copy of his remarks with the curious officials. Permission was not granted.

3) The District Court erroneously found that the Petitioner was allowed to participate in the public question and answer session following the town meeting in spite of the evidence provided the Court showing that the public part of the meeting was summarily cancelled.

4) The District Court chose to ignore all of the testimony and documentary evidence revealing the complex nature of the relationship between the state body, the Commission, and the private party,

the Historic Savannah Foundation.

3.

Need for Clarification in the Testimony of the Most Important Witness, Outside of the Petitioner, in This Case

The one person who should have known more about the town meeting than any other is Ms. Kacey Jones, the Project Director and official in charge, deposed June 1, 1983. When deposed, Ms. Jones had a great grasp of detail, but she had a remarkable habit of forgetting many matters of fact, intent and understandings, the telling of which might have strengthened the Petitioner's case, while never forgetting corresponding matters tending to strenghten the case of the Respondents. She could not remember, for example, whether or not public participation was a stipulation for funding by the Georgia Endowment for the Humanities although she remembers the exact amount of money granted. (See

Project Director's deposition, pages 16-17) She remembers that the Petitioner called her before the town meeting, but she can not remember if he called to inquire about the public participation part of the meeting (pages 140-147). She can not remember one way or another if she approved of his giving a statement (page 144). Unbelievably, she can not remember if the public part of the meeting was cancelled.

The Petitioner, in order to complement the millieu of the town meeting, chose to arrive in period dress. The Project Director at first says that the Petitioner was restrained because he was in period dress, but then she shows that the decision to restrain him was made prior to his arrival.

In all, there are 34 instances in which the Project Director could not remember significant, contentious facts

germane to the controversy which a reasonable person would expect to be within her easy grasp, and there are 14 instances in which she refused to answer questions (examples on pages 28, 30, 50, 77, 123-124, 129, 151, 184-185).

"Clearly when a dispute over historical facts of inference raises issues going to the weight or credibility of testimony, the party opposing the motion is entitled to confront and cross examine witnesses at trial and the Judge must consider their credibility and demeanor in finding facts. In that situation a trial is required."[2]

The Project Director had to rather reluctantly give away certain bare bones of fact, such as "there were no rules." citizens could do what they wanted; state-

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[2]William W. Schwarzer, "Summary Judgement under Federal Rules; defining issues of material fact," in 99 FRD at 476, citing Anthony v Petroleum Helicopters, Inc., 693 F. 2d 495 (5th Cir. 1982).

ments, comments and rhetorical questions were appropriate; any subject including prostitution could be broached at the town meeting, et cetera, et cetera.

To what degree this witness, in bringing facts to the Court, had any effect on the Court's findings of fact we do not know since the Court does not even mention the deposition or any part of it, the most important evidence in the case.

4.

The Standard of Appellate Review

In controversies raising important constitutional questions, the Supreme Court demands an independent appellate review of the facts. The Court will reverse a lower court decision when that review uncovers error of constitutional importance. Schaefer v United States 251 U.S. 466 (1920); Fiske v Kansas 274 U.S. 380 (1927); Brown v Board of Education

347 U.S. 483 (1954).

The Supreme Court reversed summary judgement in Poller v Columbia Broadcasting System 368 U.S. 464 (1962) on the basis of the Court's analysis of the facts. The Court turned back summary judgement in Burton v Wilmington Parking Authority 365 U.S. 715 (1961), skeptical of the factual findings of the Supreme Court of Delaware.

In Poller v Columbia Broadcasting System, supra, an owner of a television station sued CBS and others, alleging a conspiracy to illegally drive him out of business. The Court found a great deal of evidence tending to substantiate Poller's claim. Looking at the record in a light most favorable to Poller, the Court reversed summary judgement.

The uncontested facts in this case, which show that a public meeting for the purpose of the communication of ideas was constructed by the Respondents, were

obviously not examined in a light most favorable to the Petitioner.

The Supreme Court held in Adickes v Kress 398 U.S. 144 (1970) that the Respondent "did not carry (the) burden because of (his) failure to foreclose the possibility that there was a policeman in the Kress store while (Petitioner) was awaiting service, and that the policeman reached an understanding with some Kress employees that the Petitioner not be served." Adickes v Kress, supra, at 157.

Even accepting, for the purpose of the argument, all of the "facts" alleged in Respondents' Motion for Summary Judgement, still the movant did not foreclose the possibility that a First Amendment forum had been created; that state action under the doctrine of Burton v Wilmington Parking Authority, supra, had been satisfied; and that the Petitioner had been unconstitutionally restrained at the

forum which the Respondents created. The Respondents did not foreclose the genuine issues.

Whilst the facts, even examined in a neutral light, show improper restraint at a First Amendment forum, the District Court essentially held a bench trial and found against the Petitioner, contrary to Rule 56 of the Federal Rules of Civil Procedure.

Bose Corporation v Consumer Union ____ U.S. ____ 80 L Ed 2d 502 (1984) considers the apposition of Rule 52 (a) of the F.R.C.P. with the principle of independent review of New York Times v Sullivan 376 U.S. 254 (1964). The Court found that the conflict is more apparent than real if, after a complete examination of the record, the reviewing Court is left with the firm conviction that a mistake has been made.

Before granting Summary Judgement,

the Court should have shown that the Petitioner did not even have the right, at the public part of the meeting, to stand and ask a simple question, because the decision to restrain the Petitioner was made prior to his arrival without any basis in fact for the organizers to know if he was going to do anything more than that.

3. THE DECISION BELOW, IGNORING UNDISPUTED FACTS OF THIS CONTROVERSY, CONFLICTS WITH DECISIONS OF THIS COURT DEFINING FORUMS WITH FIRST AMENDMENT RIGHTS.

1.

"An open town meeting"

"Before you could say whether a certain thing could be done in a certain place you would have to know the history of the particular place." M'Ara v Magistrates of Edinburgh (1913) Sess Cas 1059, 1073-1074 cited in Lehman

v City of Shaker Heights 418 U.S. 298 (1974) at 302.

When the particulars are examined in this case, it will be found that the town meeting occupied a very satisfactory position in the spectrum of circumstances affording First Amendment rights.

This meeting was the only official state commission event allowing open dialogue and discussion on matters of public importance. There were no rules guiding the discussion according to the official in charge of it. Anybody could say anything. Philosophical statements, comments, rhetorical questions, and even having a go at the Mayor on the most controversial topics were all in order. It is no wonder that politics of a sort erupted at the meeting; and it is no wonder that one of the most important participants--who approved the meeting for certification by the state commission--called it "an open

town meeting." It was a public meeting for the communication of ideas.

2.

First Amendment Rights Versus Fifth Amendment Rights

Constitutionally it matters not that the party in more immediate control was a private party or that the meeting took place at a theater/auditorium. The question is whether a forum was opened and whether the exercise of expression at it interfered with its primary purposes. Wolin v Port of New York Authority 268 F. Supp. 855 (S.D.N.Y. 1967) aff'd 392 F. 2d 83 (2d Cir.) cert. denied, 393 U.S. 940 (1968).

In Lloyd v Tanner 407 U.S. 551 (1972) the Court found there is not an irrevocable conflict between First and Fifth Amendment rights at a forum opened by private parties. When the place is dedicated to a public purpose; when the public is invited

for the purpose of expression; when there is a lack of an effective alternate means for the speaker to reach his intended listeners; and when there is discriminatory application of time, place, manner or content regulations, restraint under such circumstances is unconstitutional.

In this instance all of the criteria laid down in Lloyd are satisfied. The Respondents here invited "handbilling;" they wanted the public to express their ideas on the evolution of Savannah and Georgia. The Petitioner was informed by the responsible official that statements were welcomed. "There were no rules." The only citizen they wished to restrain was the Petitioner. All the others including the Mayor could say what they wished, but this Petitioner had to say in advance what he was going to say, and in not doing so, the public part of the meeting, after the Mayor spoke on his

desire to have a park restored, was summarily cancelled.

The Petitioner's First Amendment rights were not in conflict with the rights of any other party--the organizers, the state, the public attending the town meeting. They and the Petitioner came together at this place to do the same thing: participate in a public colloquium on the development of the city and state.

The Project Director informed the Petitioner that instead of addressing the public as everyone was supposed to be able to do, the Petitioner could, if he wished, "ask a question" one on one in the lobby upon the completion of the town meeting. Sending the Petitioner to a crowded lobby where no one would be able to hear his comments in no way serves as an effective alternate means of communication with the public attending a serious colloquium.

The Project Director says in her deposition that speakers like the Petitioner, who have a compulsion to publically beat their breasts, ought to go out in the middle of a park. (Appendix, page A88) Who would be there to listen, except derelicts and pigeons, she does not say.

3.

Editing and Modern Communications Theory

The District Court relied throughout the adjudication of this case on Muir v Alabama 688 F 2d 1033 (1982) although Muir addresses the possible rights of viewers of a television program which had been cancelled for political reasons. The District Court holds in this case that the Respondents had a right to "edit" the Petitioner out of the town meeting, the town meeting being in the Court's view predominantly a pageant. The Court makes several errors.

In order to edit something, you have to see it or know something about it. The producers in Muir knew all about "Death of a Princess," the program which they decided not to run. They had either prescreened it or they were cognizant of its production in Britain and around the world.

If in Muir there had been a forum which was going to be televised, if a producer restrained a speaker because he was afraid the speaker might be controversial, then there would have been a conflict between the expressive rights of the speaker and the "editing" rights of the producer, and Muir would have applied to this case.

Never did the organizers here claim an "editing" function. There were no rules. There was only one citizen they wanted to "edit" at the town meeting, and that was this Petitioner. Based upon the

worry that the Petitioner might be controversial, they restrained him. That isn't editing, it's censorship.

Commissioner Ellington shows this town meeting was the only one amongst the official Semiquincentenary Commission events which allowed such open expression. The organizers of this event were the keepers of the only marketplace of ideas permitted in the whole state celebrations.

In modern communications theory "there is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all." Red Lion Broadcasting Co. v F.C.C. 395 U.S. 367 (1969) at 392.

4.

Content Regulation at Forums with First Amendment Rights

The Supreme Court will allow content regulation in limited forums if regulations are narrowly drawn to serve

legitimate interests of officials preserving the primary purposes of places and events. Lehman v City of Shaker Heights 418 U.S. 298 (1974); and Carey v Brown 447 U.S. 455 (1980).

"The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves." Perry Ed. Assn. v Perry Local Ed. Assn. 74 L Ed 2d 794 (1983)

The Petitioner solicited the rules and regulations which were going to guide the meeting, and he informed the official in charge that he wanted to make a "statement." "That is exciting..that is exactly what we are looking for," was the reply. The Respondents opened a forum; the school system in Perry did not.

The Petitioner sought to further the purposes of the town meeting by making some provocative comments. The purpose of

a forum, after all, is to provide a spectrum of opinion on one or many questtions. The officials, so frightened of controversy and discomfort, nevertheless cancelled the public part of the meeting after the Mayor was allowed to get his two cents in on a current issued.

"...Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members to cope with the exigencies of their period." Thornhill v Alabama 310 U.S. 88, 101-102 (1940)

The meeting was damaged beyond recognition from the in-good-faith advertisements which had been sent out to the public about it, and from that which had been agreed upon in contract with the Georgia Endowment for Humanities. And now the Respondents are trying to say that the decisions were made to preserve the nature

of the meeting.

If the organizers were really into time, place, manner and content regulations, then upon the arrival of the troublesome Petitioner, they could have simply said, "You can speak, but you can only ask a question;" or "You can speak, but you can only speak for three minutes;" or "You can speak, but you can only speak about the evolution of Savannah and Georgia." They did none of these things. They just said that no matter what he had been told, "everything had changed."

Because of the worry that the Petitioner's views, whatever they were, might somehow contaminate the place, they didn't let anybody else talk either, except the Mayor who was allowed to broach the safe and orthodox modern topic of the restoration of a certain square.

The content regulation in this case was not in the interest of preserving the

essential nature of a forum, which was actually destroyed by the officials; it was in the interest of suppressing controversy.

"(a) regulation of speech that is motivated by nothing more than a desire to curtail expression of a particular point of view on controversial issues of general interest is the purest example of a 'law...abridging the freedom of speech or of the press.' A regulation that denies one group of persons the right to address a selected audience on 'controversial issues of public policy' is plainly such a regulation." Justice Stevens in Consolidated Edison Co. v Public Service Commission 447 U.S. 530 (1980)

In Perry the unofficial teacher's union was granted the right of using school bulletin boards, holding meetings on school

property, and with the permission of school principals, using the public address systems. Here the Petitioner was told that he could not reach his intended listeners, but he could go out in the lobby after the meeting was over and make a fool out of himself.

"...we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom." Tinker v Des Moines Community School Distr. 393 U.S. 503 (1969) at 513

Those who impose a content restriction at a forum will have to show how that which is permitted is any less disruptive of the integrity of the place than that which is forbidden. Lehman v City of Shaker Heights, supra, and Carey v Brown, supra.

The Respondents have proffered no

evidence showing how the comments by the Mayor on the restoration of a certain square were any less disruptive than a simple question by this Petitioner.

The Project Director was asked in her deposition if she knew of any harm which might have come to the town meeting had the Petitioner actually been allowed to make his statement, which by the time of the deposition she had read. She knew of none.

5.

Prior Restraint

The Supreme Court insists that safeguards guiding prior restraint be stringently applied because "it is always difficult to know in advance what an individual will say." Southeastern Promotions v Conrad 420 U.S. 546 (1975) at 559.

4. THE PETITIONER MET THE STANDARD IN SUMMARY JUDGEMENT OF SHOWING STATE ACTION SUFFICIENT TO PROCEED.

In First Amendment cases the Supreme Court will find state action where there is symbiosis between a state body and a private party, when there is a sufficient degree of "publicness" of the event, and when the event consists of a forum for the communication of ideas.

The Court's findings of fact relative to the relationship between the Commission and Historic Savannah, adopted by the Eleventh Circuit, excluded the following:

1) That the Commission was born of Historic Savannah;

2) That the Commission took over the work of HSF for 1983;

3) That most controlling members of the Commission were members of HSF;

4) Half of the Savannah members of the Commission were members of HSF;

5) The most important events of the 250th were scheduled and managed jointly by the Commission and HSF under the auspices of the "Savannah Committee" chaired by Commissioner Russell;

6) The Executive Director of HSF was a member of the Commission;

7) A project of interest to the Commission and to HSF was inserted into the agenda of the town meeting;

8) Commissioners Levy and Russell helped to arrange funding for HSF from the Georgia Endowment for the Humanities;

9) The Georgia Endowment created a special funding category for Commission events which, at the behest of the Commission, funded HSF;

10) Commissioner Vaquer chaired the screening and finance subcommittees of the Commission, passed on the application of HSF, participated in the town meeting, and critiqued it for the Georgia Endowment;

11) Commissioner Ellington's testimony to the effect that for the purposes of the most visible time of the 250th, the Commission and HSF were one in the same organization.

The Petitioner ought to be held to that standard of showing whether or not the degree of state involvement and the "publicness" of the event rendered censorship there, in the guise of time and place regulations, intolerable under the First and Fourteenth Amendments.

In the totality of circumstances, the significance of the invitation to the public to come and speak is made more meaningful by the presence and type of state involvement, and the significance of state involvement is made more meaningful by the nature of that invitation to come and to engage in pure speech.

Burton v Wilmington Parking Authority 365 U.S. 715 (1961) requires that courts

engage in "sifting out facts and weighing circumstances" in the determination of that degree of "symbiosis" between the state and private party which may show the state and private party as joint participants in the challenged activity.

For the purposes of 42 U.S.C. Section 1983, upon the showing of a symbiotic relationship and joint participation, a clear connection between state regulation and the alleged restraint need not be proven. Burton v Wilmington Parking Authority, supra.

In Burton the relationship between the Eagle Restaurant, which leased space in the Parking Authority building, and the Parking Authority was so interdependent and mutually advantageous as to make the Parking Authority a joint participant in the discrimination practiced by Eagle.

In this case, the purposes, work, policies and members of the Commission

and Historic Savannah overlap, the bodies being so interrelated and interdependent that it is not possible to disentangle them. The unique and really unprecedented nature of this relationship creates a degree of "symbiosis" far stronger than in International Society of Krishna Consciousness v Lake County Agricultural Society 521 F Supp 8 (1980) cited by the District Court, or Burton.

This wasn't for members only. The public was invited through the town gazette. The meeting was advertised widely as a Commission-Historic Savannah event, it was an official event, and it was a prominent part of the official state celebrations. The invitation was to come and to participate in a public colloquium on the state of the city.

"The more an owner for his advantage opens up his property for use by the public in general, the more do his rights become

circumscribed by the statutory and constitional rights of those who use it." Marsh v Alabama 326 U.S. 501 (1946) at 506. The town meeting, for specific qualities of its construction, became a very public event. In terms of Marsh, it moved away from that degree of privacy which would have protected it from First Amendment claims, as in Moose Lodge 107 v Irvis 407 U.S. 163 (1972), towards a public state-sanctioned event, which indeed it was.

No matter how this controversy is examined, once all the facts are taken into consideration, the Supreme Court will find that degree of state action here to allow the pursuit of First Amendment claims by this Petitioner.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully prays the Court to issue a Writ of Certiorari to the United States Court of Appeals for the Eleventh

Circuit and to review and decide this case.

RELIEF ULTIMATELY SOUGHT

Petitioner believes that this Court should rule that the District Court improperly granted Summary Judgement to the Respondents, and that the decisions of the Court of Appeals and the District Court must, therefore, be reversed, with instructions to hear and to determine this cause.

Respectfully submitted,

FRANK B. HUBBY, propria persona
321 East Hall Street
Savannah, Georgia 31401
(912) 232-5511

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DISTRICT

(Filed Feb. 15, 1983)

FRANK B. HUBBY, M.D., CIVIL ACTION

Plaintiff

V.

HISTORIC SAVANNAH FOUNDATION, INC.; GEORGIA ENDOWMENT FOR THE HUMANITIES, INC.; GEORGIA SEMIQUINCENTENARY COMMISSION,

Defendants No.CV 483-066

ORDER ON APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Dr. Frank B. Hubby, a highly articulate and unusually public-spirited citizen of the "Great State of Chatham" brings this action, in propria persona, seeking extraordinary relief.

If the impetus for the granting of equitable relief was created by instances of great public outrage,[1/] Hubby's "cup runneth over" with odium and at least great

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[1]F.W. Maitland, Lectures on Equity (1920).

personal outrage sufficient to titillate the foot of the most insensitive chancellor.

Hubby's "outrage" was exacerbated when he was unable to locate the presiding judge of the Savannah Division of this Court. That judge was presiding over a complex multi-defendant, multi-count indictment for drug importation conspiracies in Brunswick. But Hubby's luck did not completely run out. His lament finally reached the ear of the undersigned late on the afternoon of February 11 when the latter fortuitiously appeared at the Savannah courthouse at a GSA program awarding the contract for the construction of the new Federal Building in Savannah.

A hearing on Hubby's prayer for a temporary restraining order was set for Saturday morning, February 12[2/] in Brunswick. Thus,

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[2]"The Chancellor does not hear both sides of the story, he only hears the plaintiff's application, and if he grants the writ the courts of law may quash that writ as being contrary to the law of the land." Maitland, supra at 3. The Court, here, required an adversary hearing.

Hubby was heard personally, in extenso.

The Complaint

The complaint, filed on February 11, 1983, essentially charges defendants with violating plaintiff's First Amendment rights to free speech and freedom of association. Two of defendants are private eleemosynary institutions; the third is a quasi-public commission. Plaintiff relates that the defendants are in charge of the semiquincentenary celebration for the State of Georgia in Savannah. It appears that the Historical Society sponsored a pageant to be put on by the Savannah Little Theatre Group at its theater depicting a colonial town meeting. There were two performances --February 7 at 8:00 p.m., and at 12:00 noon on February 8. A newspaper attached to the complaint as an exhibit stated that members of the public in the audience would be permitted to ask questions of the cast of historical characters performing in the

pageant. Plaintiff pleads that initially his offer to give a prepared statement was accepted by certain unspecified employees of the defendants, but that the offer was rescinded, thereby denying Hubby his First Amendment rights. His thoughts and ideas were thus stifled and suppressed, stillborn and unuttered in his breast, indeed a grievous wound to an advocate, let alone a public-spirited citizen like Hubby.

Before the Court, last Saturday morning, was plaintiff's motion for a temporary restraining order to enjoin defendants from:

> (a) actually continuing any and all scheduled events sponsored, advertised and promoted by the Defendants in celebration of the State of Georgia's 250th Anniversary.
>
> (b) interfering, curtailing and/or "chilling" the Plaintiff's constitutionally protected rights of free speech and association as it so pertains to the prepared statement of the Plaintiff which he sought to present at the scheduled town meeting in Savannah, Georgia on February 7, 1983.
>
> (c) denying the Plaintiff the opportunity and equal access to present his

> prepared statement before one of the assemblies at the remaining sponsored, advertised, and promoted Semiquincentenary events in Savannah, Georgia during the initial week of February, 1983.

(Emphasis added.)

At the commencement of the hearing, Hubby made an impassioned, eloquent, cohesive and appealing forty-five minute argument in which he set out the substance of his suppressed speech--essentially a political polemic on the sad state of the current local government, charged to be not only oblivious to but betraying the spirit of the founders of the Colony. Defendants countered with the argument that the Historical Society, a private institution, had a right to determine the content of its program, an historical pageant; that Hubby was not prohibited from participating in the manner advertised, i.e., asking questions of members of the cast as a member of the audience; and, that plaintiff had no right or standing to control the format of

the program.

After hearing evidence and further argument, the Court finds:

1. Although one of the defendants was publicly funded, the Historical Society, the sponsore of the historical pageant in which plaintiff demanded a right to make a speech was a private eleemosynary institution, not clothed with any governmental powers or obligations.

2. The pageant was an historical spectacle, not designed to be the vehicle for current political controversies.

3. The advertisement for the pageant, attached to the complaint, merely invited members of the audience to ask questions of the cast. There was no invitation to the public to make speeches. Hubby's reliance on that publicity was not justified.

4. Even if the advertisement gave Hubby some right to participate, it gave him no right to insist on essentially being

included in the cast of characters for the purpose of making a speech.

5. Hubby was not denied the right to ask questions.

6. Hubby had no First Amendment right to compel defendants to afford him a forum for his political beliefs.[3/]

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[3]Although it is not entirely apposite, see the thorough discussion, both pro and con, of related applicable principles in Muir v. Alabama Educational Television Commission, 688 F.2d 1033 (5th Cir. 1982) (en banc). For example: "A facility is a public forum only if it is designed to provide a general public right of access to its use, or if such public access has historically existed and is not incompatible with the facility's primary activity." Id. at 1042; and paraphrasing from its quotation from Adderly v. Florida, 389 U.S. 39, 48: "[It is a mistake to think] that whenever members of the public are permitted freely to visit a place owned or operated by the Government, then that place becomes a 'public forum' for purposes of the First Amendment. Such a principle of constitutional law has never existed, and does not exist now. The guarantees of the First Amendment have never meant 'that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please.'" Id. at 1042, n.23. And "[t]he limitations imposed on the first amendment on the operation of a

7. Hubby did not otherwise present any rational or legal basis to justify a temporary restraining order, completely disrupting a long-planned historical celebration.

8. Hubby erroneously believed that the scope of pageant was more expansive than an historical representation.

9. Hubby failed to establish that he would likely prevail on the merits.

10. Hubby failed to establish that any loss to himself would outweigh loss to the public by a disruption of the long-planned celebration.

11. Insofar as the prayer for a temporary restraining order seeks the granting of relief for the "initial week of February,

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medium of communication can not be determined by application of the rules governing freedom of expressio in streets and other areas that by tradition or design serve as platforms for expression subject only to reasonable time, place, and manner restrictions and free from content control." Rubin, J., concurring. Id. at 1048.

1983"--it has been mooted or rendered impossible to grant by the lapse of time.

12. Hubby failed to prove that defendants improperly curtailed, chilled or interfered with his constitutionally protected right of free speech and association.

At the conclusion of the hearing, the Court orally announced that the motion for the temporary restraining order would be denied. Accordingly, for the reasons stated above, Hubby's prayer for a temporary restraining order must be, and it is, hereby DENIED.

SO ORDERED, this 12th day of February, 1983.

/s/ Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

March 3, 1983

Ben Hubby, M.D.
321 East Hall Street
Savannah, Georgia 31401

RE: Frank Ben Hubby, M.D.
v. Historic Savannah
Foundation, Inc.,
et al.
A-727

Dear Dr. Hubby:

Your application for a temporary restraining order in the above-entitled case has been presented to Justice Powell, who has endorsed thereon the following:

"Denied
L.F.P.
3/3/83"

Returned herewith is your transcript of the hearing on Application for Temporary Restraining Order taken on February 12, 1983 before Chief Judge Alaimo of the United States District Court for the Southern District of Georgia.

Very truly yours,

ALEXANDER L. STEVAS,
Clerk

By s/s Francis J.
Lorson/RB

Francis J. Lorson
Chief Deputy Clerk

rjb
encl.
cc: Mark Dickerson, Esq.
Norman E. Zoller, Esq., Clerk, U.S. Court of Appeals, Eleventh Circuit (Your No. 8381-11)
Edward M. Ilderton, Esq., Clerk, U.S. District Court for the Southern District of Georgia (Your No. CV 483-066)
John E. Simpson, Esq.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8853
Non Argument Calendar

FRANK B. HUBBY,

Plaintiff-Appellant,

versus

THE HISTORIC SAVANNAH FOUNDATION, THE GEORGIA ENDOWMENT FOR THE HUMANITIES, and THE GEORGIA SEMIQUINCENTENARY COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Georgia

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(May 2, 1984)

Before FAY, VANCE and CLARK, Circuit Judges.

PER CURIAM:

AFFIRMED. See Circuit Rule 25.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8853

FRANK B. HUBBY,

Plaintiff-Appellant,

versus

THE HISTORIC SAVANNAH FOUNDATION, THE GEORGIA ENDOWMENT FOR THE HUMANITIES, and THE GEORGIA SEMIQUINCENTENARY COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Georgia

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion May 2, 1984, 11 Cir., 198 4, _____F.2d_____).

(June 12, 1984)

Before FAY, VANCE and CLARK, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Robert S. Vance
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

(Filed Nov. 23, 1983)

FRANK B. HUBBY, M.D., CIVIL ACTION

Plaintiff

V.

HISTORIC SAVANNAH FOUNDATION, INC.; GEORGIA ENDOWMENT FOR THE HUMANITIES, INC.; GEORGIA SEMIQUINCENTENARY COMMISSION,

Defendants NO. 483-066

O R D E R

This is an action brought under the provisions of 42 U.S.C. §1983 in which the plaintiff seeks redress from the Court for an alleged deprivation of his right to freedom of speech which took place during events surrounding the State of Georgia's semiquincentenary celebration in February, 1983. All of the defendants to this action have moved the Court for summary judgment under Fed.R.Civ.P. 56(b). Oral argument of these motions was heard by the Court on October 4, 1983.

Having read and considered the arguments of all parties herein, the Court is of the opinion that the motions should be sustained.

FACTS

In February of 1983, the Historic Savannah Foundation, a private corporation formed under the laws of the State of Georgia, had planned several events in honor of the state's 250th anniversary. Among these events were two "Colonial Town Meetings" at which citizens of and visitors to Savannah would be able to meet and converse with characters out of Georgia's historic past. The invitations to these meetings indicated that the sessions were to be led by such characters as James Oglethorpe, John Martin Boltzius and Samuel Nunes. The theatrical nature of these meetings was described in a publication detailing similar programs conducted at the Massie Heritage Interpretation

Center:

> A Town Meeting is an assembly with a program which has been carefully planned and researched. The central figure at the meeting is a person who influenced the Georgia Colony in its early years. The meeting takes place at a definite time in colonial history... The assembly may include appropriate musical selections, songs, poems and skits ...as well as a featured attraction, an address by a colonial character, which is followed by an informal question and answer period.

(Emphasis supplied.)

The plaintiff, Frank B. Hubby, M.D., had prepared, in anticipation of these events, a speech which he hoped to present at one of the productions. His remarks were largely aimed at many of the contemporary problems confronting Savannah, at times with graphic specificity. The plaintiff offered a draft of his remarks to the producers of the Town Meeting. On considering the plaintiff's proposed address, the organizational staff declined to include Dr. Hubby's recitation in either of the meetings, although he was not barred

from participating in the open question-and-answer sessions following the presentation by the colonial actors.

As a result of his exclusion from the "Colonial Town Meetings," Dr. Hubby initiated this action against the Historic Savannah Foundation, the Georgia Endowment for the Humanities, Inc., and the Georgia Semiquincentenary Commission ("GSC" or "the Commission"). The basis of plaintiff's claims was the deprivation of his alleged First Amendment right to speak at the meetings. Plaintiff originally sought a temporary restraining order to halt the meetings in question, but such relief was denied by this Court. The Eleventh Circuit Court of Appeals refused to disturb that denial of relief, and the plaintiff now seeks equitable relief of a more permanent nature.

After months of discovery, plaintiff moved the Court for leave to amend his

pleadings to add as defendants all individual members of the above-named commissions and corporations. The Court allowed the plaintiff to add Mr. B. H. Levy, Sr., the Chairman of the GSC, as a party but refused to allow the addition of the other 24 members of the Commission as defendants. The addition of Mr. Levy to these proceedings at this point does not in any material way alter the posture of the case, however, and it is, therefore, appropriately before the Court on the collective motions of the defendants for summary judgment.

DISCUSSION

The plaintiff has alleged a cause of action under 42 U.S.C. §1983, claiming that the defendants deprived him of his right to free speech while acting under color of state law. The defendants deny these assertions, and present to the Court three issues for summary judgment: (1) whether the GSC or any of its members were involved in the

"Colonial Town Meetings" in their official capacities sufficiently to characterize the meetings as being state action;
(2) whether the Georgia Endowment for the Humanities and the Historic Savannah Foundation, or their respective members, may be held liable under §1983 for their actions during the Savannah meetings; and,
(3) whether the presentation of "Colonial Town Meetings" under the circumstances created a public forum from which the plaintiff accrued cognizable First Amendment rights.

In the final analysis, the Court must conclude that the defendants have not acted in a way which gives rise to a cause of action under §1983. Even if there were some action "under color of state law" in this case, however, the Court cannot discern any violation of plaintiff's First Amendment rights and, thus, summary judgment in favor of all defendants is appropriate.

Lack of State Action

The Court begins by considering whether the defendants here acted "under color of state law" when they excluded the plaintiff's speech from the presentations of February 7 and 8, 1983. The roles played by each of the defendants in those productions is crucial to this inquiry.

The GSC was created by the State Senate in its Resolution No. 63, Act. No. 11 of the State Laws of Georgia, 1981. The purpose of the Commission was to help prepare and coordinate the state's celebration of its 250th anniversary. To that end, the GSC encouraged various local groups throughout the state to schedule and develop events commemorative of Georgia history and cultural achievement. The GSC offered its endorsement to such events, including the use of the official semi-quincentenary logo and the assistance of the GSC in promoting the event. Endorse-

ment by the GSC did not include Commission assistance in the actual production of the event or GSC financial support.

The Commission was independently responsible for the distribution of state grant funds to groups applying for such aid. One such grant was made to the Georgia Endowment for the Humanities in the amount of $20,000, a figure which was matched by the National Endowment for the Humanities in September, 1982. Another grant of $2,500 was made to the Historic Savannah Foundation to reproduce historic costumes for use in the Foundation's anniversary events, among them the 1983 Georgia Day Pageant and other future events. The Georgia Endowment for the Humanities also contributed to the Foundation's efforts, donating $2,390 for use in holding the "Colonial Town Meetings."

The "Colonial Town Meetings" were endorse as official semiquincentenary

events by the GSC. Nowhere in plaintiff's complaint or in the ample testimonial and documentary evidence before the Court is there any basis for the claim that the Commission or its members took an affirmative role in the design, organization or actual conduct of the Town Meetings at which the plaintiff wished to speak. The production of the meetings was left entirely in the hands of the Historic Savannah Foundation.

The Supreme Court made it clear in Monell v. New York City Department of Social Service, 436 U.S. 658 (1978), that 42 U.S.C. §1983 imposes liability on a government agency or its agents only where the action alleged to be unconstitutional "implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the body's officers." Id. at 690. Individual state employees or agents of the state acting on their own do not implicate the

state in their actions, id. at 692, but rather must be acting pursuant to or under the direction of that state policy or law in order to create state liability under §1983.

Ostensibly, private action may be transformed into state action if the relationship of the state to the wrongful activity is sufficiently intimate to create a "symbiotic" relation with the private actors. For example, in International Society for Krishna Consciousness, Inc. v. Lake County Agricultural Society, 521 F.Supp. 8 (N.D.Ind. 1980), the exclusion of a religious group from a fair for distributing religious materials was found to be action taken "under color of state law" because the court found significant involvement of the state in the fair's operations. Although the official organizing group was a private entity, the court recognized that the fair was also

heavily regulated by the county itself; the fairgrounds were owned by the taxpayers and controlled by the county commissioners; the fairgrounds had been let out for the use of other groups in addition to their use for the fair, raising equal protection problems; and, all of the events conducted at the fair had to comply with the state regulations and were subject to the approval of the State Agricultural Board.

The intimate involvement of the state and county in International Society for Krishna Consciousness amounted to significant direct control of the fair activities in question. It is apparent that the "symbiotic" relationship in that case was based on more than mere financial support, however. Other courts have confirmed the notion that the mere use of state funds in a private activity does not render those action "under color of state law" per se. Cohen v Illinois Institute of Technology,

524 F.2d 818, 825 (7th Cir. 1975); Greene v. Johns Hopkins University, 469 F.Supp. 187, 194-95 (D.Md. 1979).

So far in the present action the plaintiff has failed to present to the Court any cogent state policy, etc., adopted by the Historic Savannah Foundation or its members which directly accounts for the failure of the plaintiff to speak at the "Colonial Town Meetings." That GSC grant money may have helped to purchase costumes for the actors in these meetings is involvement too tangential to amount to the direct involvement necessary to incur liability under §1983. See Monell, supra at 692.

The Georgia Endowment for the Humanities played an even more attenuated role in the "Colonial Town Meetings." The Endowment merely served as a conduit for state funds by making a grant to the Historic Savannah Foundation to assist in the production of the meetings. Such action can hardly be described as "state action" or "under color

of state law" for §1983 purposes.

Plaintiff has attempted to cast the entire production of the "Colonial Town Meetings" as the offspring of a "symbiotic" relationship between the GSC and the two private defendants in this case. No evidence is before the Court which supports such a conclusion. The only tangible nexus between the state and the production of the meetings was GSC financial support and the ex officio participation in the meetings of several members of the Commission. That the Commission later declined to take any action with regard to plaintiff's complaints that he was not allowed to give his speech does not amount to a causal role in the plaintiff's exclusion from the "Town Meetings." See Polk County v. Dodson, 454 U.S. 312, 324-25 (1981).

Consequently, the Court can find no interpretation of the events surrounding the Savannah "Colonial Town Meetings" which

justify plaintiff's claim that the Historic Savannah Foundation or any of its members were acting pursuant to state direction, as an agent of the state or otherwise "under color of state law" when the plaintiff was denied his request to give a speech at those meetings.

Plaintiff's First Amendment Rights

The plaintiff alleges that he was denied his First Amendment right to free speech when the directors of the "Colonial Town Meetings" rejected his offer to deliver a speech at those meetings. The lack of state action in that rejection notwithstanding, the Court concludes that the plaintiff suffered no denial of his civil rights under §1983 at the hands of the Foundation, because the "Colonial Town Meetings" presented no forum to which the Constitution guaranteed the plaintiff access.

The First Amendment does not require

that every state-sponsored event present an open forum for public participation. The state may limit speech with reasonable restrictions as to the time, place and manner of presentation. Cox v. Louisiana, 379 U.S. 536 (1965). Moreover, the state may exercise its own freedom of speech by conducting events with a limited forum for public participation. Muir v. Alabama Educational Television Commission, 688 F. 2d 1033, 1037-38 (5th Cir. 1982).

Plaintiff invites the Court to ignore what were reasonable restrictions on the conduct of speech at an historical re-enactment of a colonial town gathering and hold that the Historic Savannah Foundation intended to create an open forum at those meetings. This the Court declines to do. Nowhere is there any indication, either in the invitations to the Savannah meetings or in the Massie Heritage Center prototype

for "Colonial Town Meetings," that an open forum for the prepared remarks of the audience was to be provided. The meetings were to "take place at a definite time in history," and the directors of the meetings were entitled to place restrictions on audience participation in order to maintain the colonial context of the proceedings.

The plaintiff refused to abide by these restrictions, instead attempting to introduce a ten-minute prepared speech on the contemporary civic problems faced by the citizens of Savannah. Had the plaintiff tried to converse with the actors at the Savannah meetings within the historical setting of the production, there is every indication that he would have been allowed to do so. Given this scenario, the Court cannot see how the plaintiff has been foreclosed from presenting his views to the public; he merely was not allowed to interject them into a presentation of

his own choosing.

Lacking a public forum, the plaintiff cannot claim a deprivation of his First Amendment rights, and the defendants are not liable to the plaintiff for any injuries alleged by the plaintiff under 42 U.S.C. §1983.

CONCLUSION

Based on the foregoing discussion, the Court hereby GRANTS summary judgment in favor of all defendants in this action. The Clerk of the Court is directed to enter an appropriate judgment.

SO ORDERED, this 23rd day of November, 1983.

/s/ Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FRANK B. HUBBY

Plaintiff

v

CIVIL ACTION
NO 483-066

THE HISTORIC SAVANNAH FOUNDATION, THE GEORGIA ENDOWMENT FOR THE HUMANITIES AND THE GEORGIA SEMIQUINCENTENARY COMMISSION

Having heard the plaintiff's MOTION FOR LEAVE TO AMEND HIS COMPLAINT to so include a separate count and cause of action under 42 U.S.C.A. section 1983 and the plaintiff's request to amend his requests for relief, it is so ORDERED.

This 17th day of August, 1983

/s/ Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FRANK B. HUBBY

Plaintiff

v

CIVIL ACTION
NO 483-066

THE HISTORIC SAVANNAH FOUNDATION, THE GEORGIA SEMIQUINCENTENARY COMMISSION AND THE GEORGIA ENDOWMENT FOR THE HUMANITIES

Defendants

ORDER

Upon consideration of the Plaintiff's request for leave of the Court to amend his complaint so as to name Mr. B. H. Levy, the Chairman of the Georgia Semiquincentenary Commission, as a co-defendant with the Commission for the same causes of action, as amended, it is SO ORDERED, this 6th day of September, 1983.

/s/ Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

GEORGIA
1733 - 1983

BEST AVAILABLE COPY

Teaching Georgia's Colonial History at a "Town Meeting" Assembly

Living history lessons developed by
The Heritage Classroom Program
at
The Massie Heritage Interpretation Center
207 East Gordon Street
Savannah, Georgia 31401

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THE BOARD OF PUBLIC EDUCATION FOR THE CITY OF SAVANNAH AND THE COUNTY OF CHATHAM CHARTERED DEC. 18, 1866

GEORGIA 250 1733 - 1983

NON SIBI SED ALTIS
GEORGIA HISTORICAL SOCIETY

Description of a Town Meeting

A Town Meeting is an assembly with a program which has been carefully planned and researched. The central figure at the meeting is a person who influenced the Georgia Colony in its early years. The meeting takes place at a definite time in colonial history. Teachers and students must study the period and the colonial character who will be featured at the meeting. An assembly program which lasts from forty-five minutes to an hour is developed. Parents, teachers, relatives and friends are invited to attend and the news media are alerted.

The colonial character is a volunteer from the community. He must be completely familiar with his role and feel comfortable in his costume.

The assembly may include appropriate musical selections, songs, poems and skits by students as well as the featured attraction, an address by the colonial character, which is followed by an informal question and answer period.

Components of a Town Meeting

Assembly Program:

Developed and executed by teachers and students

Researched Material on Colonial Character:

a. biographical sketch
b. fact sheet
c. bibliography

Colonial Character:

An appropriately costumed volunteer who knows his "role"

Student participation:

Master of ceremonies
songs, poems, skits, philosophical statements or comments
band, chorus - colonial music

Colonial Arts and Crafts (optional):

Student work exhibited to complement the assembly

Colonial foods (optional):

May be prepared by home economics classes ' offered

APPLICATION OF HSF TO GEH
(Excerpts)

* * *

GEORGIA ENDOWMENT FOR THE HUMANITIES
1589 Clifton Road, N.E.
Emory University
Atlanta, Georgia 30322

1. TOPIC (TITLE) OF PROJECT

Colonial Town Meetings:
The Impact of a Legacy

3. SPONSORING ORGANIZATION (INCLUDE ADDRESS)

Historic Savannah Foundation
P.O. Box 1733
Savannah, Georgia 31402

5. PRINCIPAL PROJECT DIRECTOR
A. NAME AND MAILING ADDRESS

Jones, Kacey
P.O. Box 1733
Savannah, Georgia 31402

Assistant Director
TITLE POSITION

B. TELEPHONE (INCLUDE AREA CODE & EXT)

912 233-7787

7. PROGRAM TO WHICH APPLICATION IS BEING MADE

(X) General Public Programs

9. HUMANITIES FIELDS INCLUDED

History, Sociology, Religion,
Philosophy

10. DESCRIPTION OF PROPOSED PROJECT

The Colonial Town Meetings will utilize an assembly/meeting format to present the characters, issues and relationships which formed the basis of early life in the colony of Georgia. Since the birth of the colony in 1733, the development of life in Georgia has maintained the idealism expressed in the state motto. Underlying the content of the Town Meeting is the theory that it is only through an intelligent understanding and assessment of past history that one can make worthwhile contributions to the present, and ultimately to the future. The Town Meetings will feature 7 colonial characters of varied ethnic, religious and economic backgrounds engaging in an interchange of the issues prevalent in 18th-century Georgia. Audience participation is a natural part of the format, and the audience becomes the citizenship of colonial Savannah. The Town Meetings will be held at the Savannah Theatre, located on one of Oglethorpe's squares.

11. PROGRAM DATE(S)

2/7/83 and 2/8/83

12. PROGRAM LOCATION(S)

Savannah Theatre, Chippewa Square

13. IS THIS A PROJECT FOR THE SPECIAL INITIATIVE ON GEORGIA HISTORY?

(X)YES

14. PROGRAM FORMAT(S)

Assembly and Discussion.

15. AUDIENCE (DIRECT BENEFICIARIES)

a. General Adult Population
b. Special Adult and Young Adult Groups
c. High School Students

PROJECT SUMMARY

GIVE A BRIEF OVERVIEW OF THE PROJECT. ...FULL DESCRIPTION AND DETAILS SHOULD BE INCLUDED IN THE NARRATIVE SECTION OF THIS PROPOSAL.

I. PROJECT OBJECTIVES (ANTICIPATED OUTCOME OF THE PROJECT):

The colonial town meetings provide a richer understanding of the impact of local history on the direction that life has taken in Savannah since the colonial period. By presenting 7 key colonial characters of diverse ethnic, religious and economic backgrounds in their vital roles as valuable contributors during the founding days of the colony, each viewer/participant is reminded of his/her own potential in shaping the future of Savannah, and, by extension, of any community in which he/she may reside. By exploring humanities issues and subjects in colonial history as well as their impact on later history, it is believed that the audience will be more motivated to continue the legacy of excellence for future generations.

II. HUMANITIES CONTENT OF PROJECT (WHY IS THIS A HUMANITIES PROJECT? HOW WILL THE HUMANITIES DISCIPLINES AND SCHOLARS INVOLVED ILLUMINATE THE ISSUES UNDER DISCUSSION?)

The Town Meetings will stimulate critical thinking and will promote increased awareness in the areas of: History, through

the planned presentation of and interaction between colonial figures and through a discussion which will illuminate the impact of early history on later development; Sociology, through the presentation of people of diverse backgrounds, origins and values brought together in the new world; Religion, through an awareness of the existence in the colonial period of members of various religious sects working toward the same end; Philosophy, through the encouragement to assess critically and intelligently historical precedents in contributing to the creation of an ongoing legacy. Project coordinators and humanities scholars involved in the project will be actively involved in the planning and research for and the implementation of the Town Meeting format and content.

INTRODUCTION

...The Colonial Town Meetings are an essential component of the study and understanding of colonial history and of the impact of early eighteenth century accomplishments on life in a contemporary world. The project's underlying theme is based on the theory that the knowledge of and lessons learned from historical precedents are critical to the positive ongoing development of a heritage. The project objective is to encourage a more complete understanding, through the presentation of historical precedents, of each person's potential role and responsibility in upholding the ideals set forth by the founders of the colony and in making a contribution to the fabric of life today that will assure for future generations a continuation of Georgia's legacy of excellence....

ORGANIZATION AND CASTING

Project Directors will oversee the casting of characters for the two public performances, and will organize the script and interchange of discussion. They also will "plant" questions and comments in the audience to stimulate and encourage further discussion. The performers will be drawn from members of the ethnic groups whose characters they will be portraying for the event. ...

Historic Savannah Newsletter, January/ February 1983, page 8:

Savannahians of 1983 are invited to step back into history and attend a colonial town meeting in the Savannah Theatre, located on the square where Oglethorpe's statue makes it homes. The audience will become the citizenship of eighteenth-century Savannah in a Town Meeting conducted by our cast of historic characters. The Town Crier will announce the beginning of the meeting, which will be led by General Oglethorpe. Sharing the platform will be Chief Tomochichi, Mary Musgrove, Paul Amatis, Samuel Nunez, Andrew Bryan, and Martin Bolzuis. Each of these people make a major contribution to the early development of the colony, setting the stage for subsequent growth.

The Town Meeting format of this program provides a context for understanding colonial life--its challenges, the hardships imposed upon its citizens, the glory of its successes, the roles played by these major figures in shaping the destiny of our state. We will hear from each of them the hopes and dreams of the colonists and how these were realized.

The vision shared by newcomers to this land will be examined by our own Mayor Rousakis, who is a character of the present, a pivot between the past and the future. The Town Meeting will explore questions and encourage answers. Where have we as a citizenship come from? Have later generations lived up to the visions of the colony's founders? What are our visions for the future, and how will we realize them? How can each of us contribute, as these colonial

characters did, to the future? How can we continue the legacy of excellence set in motion 250 years ago? The audience is encouraged to prepare and ask questions of our colonial characters.

. . .

A45

AFFIDAVIT OF COMMISSIONER BETTY ELLINGTON
August 1983
(Excerpt)

-37-

Part of the reason of the existence of the Semiquincentenary Commission was this giving and taking as witnessed by the invitation in the advertising by the Commission to all citizens to come and to "participate."

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The town meetings, which were "official" Semiquincentenary Commission events, and which carried the official state seal of the Commission, were the only official Semiquincentenary Commission events which actually provided the public with the opportunity of participating in such an open and unrestrained fashion. Because of this, it was imperative that we actually let the people come and have their say, as town meetings are supposed to allow.

-39-

But because of the nature of the Commission, its attitudes and policies, which were in consonance with the attitudes and policies of those organizations, such as the Historic Savannah Foundation with whom it worked in concert, I knew that this town meeting was "for show."

-40-

Inherent in the legislative establishment of the Commission was the expectation that the Commission would meet the needs of the public in whose name it was established, whose monies the Commission spent.

...

DEPOSITION OF PROJECT DIRECTOR; EXAMINATION BY PETITIONER

(Excerpts)

Page 71: ...for example, on certain subjects that I would not see as having a bearing on this particular town meeting. Now, and I guess, it's hard to set out rule when you don't know, when you don't think there's going to be a need for a rule or for some sort of control or whatever. In other words, there were no rules, live one, two, three, four, five, this question can be asked, this question cannot. Of course there were no rule of that sort. But in any situation where the project manager, such as myself, feels that some exercise of authority needs to be, needs to come up, then I think that person can do that. ...

Page 82: ...

Q. Was there a rule which was going to forbid a dialogue from developing back

and forth across the stage?

A. As I said, there were no rules.

...

Page 83: ...

Q. Alright. Now let me get back to hypothetical again. Assuming that a dialogue started and it was interesting to the citizens concerned, those on the stage and those in the auditorium, and presuming it engaged the interest of many people, may I presume from what you have said before that there was no rule or intent on your part to actually discourage a bonafide public discussion which might have --

A. There is no rule, there is no rule, I've said that.

...

Page 85: ...

A. Well, I want you to answer in the fashion that you're most comfortable. I'm not going to put any words in your mouth and Mr. Simpson won't let me. But I think

you have, I've understood from you that you're going to allow a public discussion at this place, presuming it's not three a.m. and everybody's unhappy.

A. Well, I see nothing wrong with a public discussion. It did not cross my mind that it would even happen that way, a public discussion in any program could be very exciting, I think, a meeting or whatever. But I would hope that somebody in a meeting or in a room or in a seminar or in a lecture would have that degree of authority to say, you know, "we have beat this subject to death, now let's move on to something else" or somebody to kind to move things along.

...

Page 104: ...

Q. Racial developments in Savannah--the status of racial relations in 1983 which have a historic basis, could he have framed a question along those lines?

A. I'm sure somebody could have, I'm not saying anybody is incapable of framing that kind of question. Andrew Bryan did talk about slavery, as a matter of fact in his presentation.

Q. So are you telling me then that we could have had questioning and answering about racial relations in 1983, in regards to their historic derivations?

A. As I have said before, we could have had questions of any type, any variety.

...

Page 109: ...

Q. Would have a citizen been allowed to say, "Isn't it true that," and have the first part of his question be the essence and the second part of his question to be some sort of a statement?

A. Well, I supposed that a citizen--I certainly wouldn't have put a gun to anybody's head--I think a citizen would

have been allowed--able, allowed, whatever to ask a question. But that's not saying that I would have not intervened if I had found it necessary.

Q. Would a citizen have been able to preface his question by a short story or parable?

A. I would hope not--now, it's hard for me to say, 'Yes, he would have been allowed' or 'No, he or she would not have been allowed'--I would have been disappointed.

...

Page 122: ...

A. Well, I think it would have been permitted if somebody wanted to ask a question and I assure you, probably the Mayor would have turned it around to a positive response, if he had been asked the question.

Q. You are telling me then that a citizen could have asked the Mayor a

question that night?

A. A citizen could have asked any of the characters a question, the Mayor was a character.

Q. Okay. Could a citizen asked the Mayor a question about contemporary Savannah that night?

A. A citizen could have asked any of the characters anything that citizens wanted, no body in there--no citizen or member of the audience was told, 'These are the kind of questions you can ask.' 'These are kind of question you cannot', I think we've been through that.

Q. Could a citizen have asked Mayor Rousakis, about prostitution?

A. I'm sure the citizen would have the capability of doing--

...

DEPOSITION OF PROJECT DIRECTOR; EXAMINATION BY PETITIONER

(Excerpts)

Pages 163-165: ...

Q. Why was the decision made to have the question session in the lobby?

A. Well, if you've ever sat for a long time in one of those seats--yes they are more comfortable than the Alee Temple or probably the Civic Center--but, people need to get up and move around. There were only about seventy people there that night in the audience, and many more people than that have fit into the lobby of the theater. And some of the people were elderly, and I knew most of them. And it just seemed appropriate that they would get up and move around and go out in the lobby. And then I guess one other reason was that I didn't want people if you did happen to speak, to be subject to sitting there, because

I didn't know what you were going to say. I didn't know if it could run on. I didn't know what subject. And when you're dealing with an unknown and your audience doesn't know it either, what's coming up next, then I think that probably played a part in our decision to have the questions outside in the lobby.

Q. Are you telling me then that without really knowing what I was going to do, my arrival there was factor in closing the meeting and moving the questions to the lobby?

A. No. The decision was made by Mr. DuBois to do that before the town meeting began. And he said that the rehearsal, the dress rehearsal that they had done at five or whenever, had run late, that people were tired, and that it was going to be longer than 45 minutes. And so the decision to have the questions in the lobby was made before the town meeting

began.

Q. Now, if I heard you correctly, you said that somehow my presence or my controversy played a role in moving the questions to the lobby. I'm trying to get at what role did it play.

A. Well, because you had called me that day, and I felt that something was up. And I got to the theater earlier, earlier than the program began, and I asked Eric if you had called him. And he said, "No," but I have heard that something, that he is going to make a statement of some sort, and so, he said, "in the interest of time, and in the interest of not knowing what he's going to say," and I'm paraphrasing, please don't tell Eric that I'm quoting him word for word, "that this is, that we should have the questions, either eliminate the questions or have them in the lobby afterwards, in other words let

people get up and walk around and move."

Q. Alright now, you're telling me he said, "Let's eliminate the questions."

A. Well, he said we can either eliminate them, or we can have them, you know, after people get up. But you really need to talk to him about that. There were a lot of details going on. And believe me, Dr. Hubby, you were not the major thing on my mind that night. There were a lot of details going on in my mind and I cannot remember conversations verbatim.

Q. Alright. Now, Eric says, "Let's eliminate questions,"

A. I just--

Q. I didn't really finish, "or we can have them," and he says this to you. What's your reaction to that?

A. I don't remember, I think I said we've got to announce the questions somehow because they're on the...

DEPOSITION OF PROJECT DIRECTOR; EXAMINATION BY PETITIONER

(Excerpts)

Page 172: ...know that Eric told me at some point, please don't ask me to pinpoint what time, it was a long day-- Eric mentioned that he would have to see what you were going to read, that as an artistic director he would have to do that. And quite frankly, we assumed that since you had not followed my suggestion and called him, that you would not be there. And it was kind of a surprise to me that you did have me pulled out of the town meeting that I had set up, to come talk to you in the lobby. I guess I just assumed that you had decided, that you weren't going to do it because you didn't call Mr. DuBois.

Q. At the time the decision was made, had anybody at Historic Savannah actually seen a copy of what I was going to say?

A. No, not that I know of.

Q. You hadn't, had you?

A. No. And I have to tell you, I have skimmed it only very briefly. I have not read it.

Q. Would it be fair to say that the decision was based on speculative apprehension?

A. Well, I think that would be reasonable.

...

Page 178: ...But now we're focusing on you, Kacey Jones, wouldn't a reasonable person conclude that as far as you were concerned he had the green light. He may or may not have had the green light from Mr. DuBois but as far as you were concerned he had the green light, would that be a fair statement?

A. I don't think so, not based on that conversation, and what--I think what you're saying that you gave me almost all

the information about what you wanted to do--the critical part you didn't--you didn't give me your content. So you kind of asked me half a question and you expect me to give you a complete answer, now that's not fair. If the content was so important and was so great and it was so necessary for it to be heard and it was so important to you. Why was it such a big secret?

...

AFFIDAVIT OF MR. JULIUS HORNSTEIN

State of Georgia
County of Chatham

Personally appeared before the undersigned officer duly authorized by law to administer oaths Julius Hornstein, who, on oath deposes and says as follows:

I attended the Town Meeting which was conducted on February 7th at the old Savannah Theater. My reasons for doing so were my interest in Georgia Week and several of the planned events of that week and also to hear Dr. Ben Hubby's presentation during the meeting. It was my understanding that the Town Meeting forum would provide a general airing and discussion of issues which affect the quality of life in our community. Specifically, I was asked if I could make the meeting, since Dr. Hubby hoped that persons who share many of his concerns might be present in order to facilitate discussion. Beyond my presence there, I had no other agenda than my interest in the Town Meeting and discussion that might evolve out of Dr. Hubby's presentation and that of others.

Essentially, what I found to take place was an historical pageant, with period costumes worn by persons who portrayed (very nicely) significant characters from Savannah's colonial founding. It was well done. At the conclusion of the program which too about one hour, there ware a few remarks by Mayor Rousakis wereby the Town Meeting was terminated. In spite of the program for the event which stated that "Questions" would be

fielded, there were none asked for nor offered. The meeting sort of "went away". It was my impression that there was a departure from the program schedule and that the closure was ad libed.

/s/
Julius Hornstein

Sworn to and subscribed before me this
23 day of March, 1983

/s/ Gloria M. Fischer
Notary Public
Chatham County, GA
My Commission Expires Feb. 3, 1987

AFFIDAVIT OF MS. JUDY FARRELL

State of Georgia, County of Chatham, personally appeared before the undersigned officer, duly authorized by law to administer oaths Ms. Judy Farrell, who on oath deposes and says as follows:

A friend called me and said that as part of Georgia Week there was going to be a town meeting at the Little Theater and would I like to attend? I said yes. I went to the meeting, reviewed the program. I noted that the sheet ended with "public comments". As soon as the program started I realized the first part of this was a pageant. And I assumed that from reading the program public comment was saved for the end. The program closed with the Mayor making comment. I didn't feel any one in the audience was sure that the program was over. WE were following our programs and we were wondering when

the public comment was. All of a sudden I realized the program was over. I said, "they cut the program short, I believe," to this friend of mine. I think she probably agreed. I knew that Ben Hubby was supposed to make a presentation and obviously I thought something had gone wrong. I got up and I started walking out. In the lobby people were mingling. I was one of the first to leave. I don't remember anybody saying anything in the theater about asking questions in the lobby. People were talking amongst themselves in the lobby and it looked a reception. I didn't see any actors there or people in costume. I was disappointed in that it was not what I expected it to be. I didn't feel that they hadn't acted in good faith necessarily but I had some questions about it. I expected a lot of interaction with the audience, because it was called a town

meeting and I thought there would be public comments because that was on the program.

/s/
Judy W. Farrell

Sworn to and subscribed before me this 23rd day of March, 1983

/s/ Pauline R. Woods
Notary Public, Chatham County, Georgia

Glasenapp, Todd, "Old Colonial Setting Can't Escape Politics," Savannah Morning News, February 8, 1983, pp. 1B, 12B.

Some politics of the present entered Monday night's "Oglethorpe's Vision: A Colonial Town Meeting," the most recent in a series of dramatizations on the founding of Savannah.

Savannah Mayor John Rousakis pledged to restore Franklin Square which was eliminated some years ago by the broadening of Montgomery Street. The mayor was the last figure to address an audience of about 75 people at the Savannah Theatre.

Preceding the mayor were some speakers from a preceding era--the early years of the colony of Georgia. The meeting, part of Georgia Week 1983, was sponsored by the Historic Savannah Foundation and produced by the Savannah Little Theater.

Those appearing as Savannah's early leaders, however, did not limit themselves to 18th century issues. Rousakis' comments were directed to a remakr made by Henderson Formey, in real life associate superintendent of education for Chatham County schools, but the Rev. Andrew Bryan in the town meeting program.

In the late 1700s, Bryan founded the First African Baptist Church, which today stands in its original site--just off what was Franklin Square. In closing, Formey said, "I beseech the city fathers of Savannah to restore Franklin Square, so it can return to its original beauty."

Rousakis accepted a scroll from Gen. James E. Oglethorpe--played by John Duncan--and said, "We accept your legacy with its responsibilities. We know the great values and have seen the importance of your leadership as we develop as a city and a state."

"As an additional note," Rousakis said, "we shall recreate Franklin Square for Rev. Bryan and his church."

Earlier, the audience heard historical tales from actors playing Yamacraw Indian Chief Tomochichi, interpretor Mary Musgrove, Dr. Samuel Nunes, silk culture pioneer Paul Amatis and Lutheran Rev. Martin Bolzius.

But the evening's largest applause belonged to William Glover, playing Samson Bryan, brother of Rev. Bryan. Glover presented two songs of early Georgia, "Ring the Chiming Bell" and "Roll, Jordan, Roll."

Glover said he sang the second selection for then-President Franklin D. Roosevelt during Savannah's 200th anniversary celebration in 1933.

Oglethorpe reviewed the early colonization of Savannah, referring often to his town plan--one of the first such plans implemented in the New World.

"Even with the advent of the 20th century automobiles, Savannah has remained a very livable city," said the general, cloaked in a British redcoat and white wig.

Tomochichi, played by Douglas Waldorf, reviewed the story of his tribe's settling on bluffs overlooking the Savannah River, "the river of endless marshes."

CRITIQUE OF TOWN MEETING BY COMMISSIONER MIKE VACQUER

(Excerpts)

HISTORIC SAVANNAH FOUNDATION letterhead
William Scarbrough House, P.O.Box 1733,
41 West Broad St., Savannah, Georgia 31402
(912) 233-7787

MEETING THE OBJECTIVE

DO YOU FEEL THAT THE PROGRAM FULFILLED ITS OBJECTIVE OF PRESENTING COLONIAL HISTORY THROUGH COLONIAL ROLES AND OF ENCOURAGING THE IMPORTANCE OF UNDERSTANDING COLONIAL HISTORY? PLEASE COMMENT.

The presentations of the individual characters gave a good feeling for the troubles faced by the settlers in the early 18th century.

DO YOU FEEL THAT THIS PROGRAM HAD A LOGICAL PLACE AS PART OF GEORGIA WEEK ACTIVITIES FOR THE 250TH?

This perhaps was one of the most important programs of the 250th celebration. It gave an opportunity for the public to hear interpretations of the experiences of these key individuals and to gain some insight about their motivations.

METHOD OF PRESENTATION/QUALITY OF CONTENT

WAS THE STAGED FORMAT, IN YOUR OPINION, EFFECTIVE FOR PRESENTING THE MATERIAL?

Yes, however, it may have worked better had only one character been on the stage at any given time.

DO YOU FEEL THAT THE SCRIPT COVERED THE SUBJECTS?

The actors were allowed the freedom to develop their own scripts from their research of their own characters. This worked very well.

WAS THE PROGRAM WELL TIMED? TOO LONG? TOO SHORT?

Proper length.

...

AUDIENCE REACTION

PLEASE COMMENT ON YOUR OBSERVATIONS OF THE AUDIENCE REACTION. DID THEY SEEM TO ENJOY THE TOWN MEETING? WERE THEY ATTENTIVE? WERE THEY BORED?

The audience appeared to fully enjoy the Town Meeting presentations. Many commented that this was the first time they had heard of many of the comments made by the characters. A living history presentation is often ghe best vehicle for presenting accurate data in a palatable manner.

...

OTHER COMMENTS

PLEASE USE THIS SPACE TO ADD COMMENTS, SUGGESTIONS, CRITICISM, ETC. THAT MAY NOT HAVE BEEN SOLICITED IN THE QUESTIONS ABOVE.

...It is unfortunate that there was not an opportunity for an exchange of ideas and information between the colonial characters and the audience. It is very sad that some individuals try to make a mark on history by being the fly in the

ointment and attempting to disrupt what was a very class and upbeat presentation.

Perhaps the concept of an "open" town meeting can again be tryed with the requirement that all questions be directed to issues that would have concerned the colonial leaders during their lifetime. It would also be appropriate to limit comments to one or two minutes, timed with an hourglass (In this manner, any comments could be heard, including comments on modern problems).

/s/ Mike Vacquer
NAME

GEORGIA ENDOWMENT FOR THE HUMANITIES
1589 Clifton Road, N.E.
Emory University
Atlanta, Georgia 30322
(404) 329-7500

GRANT AGREEMENT

(Excerpts)

The Historic Savannah Foundation, Inc. (grantee), hereby signifies its acceptance of a grant in the amount of $2,890.00 for Project No. GEH-81-071, entitled "Colonial Town Meetings: The Impact of a Legacy," from the Georgia Endowment for the Humanities (hereinafter called GEH). The grantee agrees to provide cost-sharing in the amount of $8,110.00, either in cash or in kind, for a total project cost of $11,000.00.

The grant period will extend from September 13, 1982 to February 28, 1983.

...

C. Limitations on the Use of Grant Funds

1. Grant funds must be obligated during the grant period. Obligations outstanding as of the official termination date shall be liquidated within thrity days thereafter.

2. Grant funds may be expended only for project purposes and activities as set forth in the proposal and budget originally approved by the GEH, or as subsequently amended and approved in writing by the GEH. Written requests for amendments must be submitted and

approved prior to significant revisions of the following:

a. Changes of project scope, purpose, activities, dates and times, or principal participants.

b. Changes in the project director or other professional personnel identified in the approved proposal.

c. Changes in the project budget which exceed ten percent in any line item, or which introduce or eliminate categories of expenditures.

d. Changes in duration of the grant period. Such changes must be requested at least 30 days prior to the termination of the grant period.

e. Decreases in the level of cost-sharing contributions which exceed ten percent in any category.

3. Any funds received that remain uncommitted at the termination of the grant period must be returned with the final financial report by check payable to the Georgia Endowment for the Humanities.

4. All GEH funds, or properties acquired with GEH funds, which are determined after audit and hearing to have been improperly applied, must be returned to the GEH.

D. Projects supported by the GEH must be open to the public without charge. If necessary, however, materials or meals may be offered at a charge not to exceed their cost.

...

I. Modifications

No person other than the Executive Director of the GEH is authorized to modify any of the terms of this agreement. The GEH shall not be liable for any costs incurred by the grantee which are not in conformance with the terms of this agreement.

...

L. Non-Compliance

Failure of the grantee to comply promptly with any and all provisions of this grant agreement shall be deemed sufficient cause for it to be terminated. Such termination shall be effective upon receipt by the grantee of written notice from the GEH.

M. Non-Discrimination

1. Civil Rights Act of 1964 (Title VI, Section 601)

Acceptance of this agreement signifies full compliance with Title VI of the Civil Rights Act of 1964 to the end that no person, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity financially assisted by the Georgia Endowment for the Humanities.

...

GEORGIA ENDOWMENT FOR THE HUMANITIES

/s/ Gail Evans
Chairman

September 29, 1982
Date

/s/ Ronald E. Benson
Executive Director

September 13, 1982
Date

GRANTEE

Historic Savannah Foundation, Inc.
PO Box 1733
Savannah, GA 31402

Project Director (signature)

Kacey Jones
Project Director (typed)

Date

/s/ G. K. Matthews
Project Fiscal Agent and/or Contract Officer (signature)

G. Kennedy Matthews
Project Fiscal Agent and/or Contract Officer (typed)

Date

912-233-7787
Telephone

Executive Department

THE STATE OF GEORGIA

Executive Order

By The Governor:

WHEREAS: The General Assembly of Georgia at the 1981 Regular Session thereof enacted legislation (Ga. Laws 1981, Senate Resolution 63, Act No. 11) creating the Georgia Semiquincentenary Commission; and

WHEREAS: Said Act provides for the Comission to cooperate with local groups to prepare an overall program for commemorating the two hundred and fiftieth anniversary of the founding of Georgia and to plan, encourage, develop, and coordinate observances and activities commemorating the historic events associated with such momentous occasion; and

WHEREAS: Said Act further provides for the promotion and assistance in the publicizing of the historical events surrounding the founding of Georgia and that the Commission prepare and furnish historical material to individuals, organizations, or agencies charged with such publicity; and

WHEREAS: Said Commission shall be composed of twenty-five members as follows: five members shall be appointed by the Governor, ten members shall be appointed by the Speaker of the

House, and ten members shall be appointed by the President of the Senate;

NOW, THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, PARTICULARLY BY VIRTUE OF THE PROVISIONS OF THE AFORESAID ACT, IT IS HEREBY

ORDERED: That the following named persons be and they are hereby appointed as members of the Georgia Semi-quincentenary Commission for a term of office ending January 1, 1984, at which time the Commission shall stand abolished:

Betty Ellington
1904 Champion Street
Savannah, Georgia 31405

John Hayes
116 West Jones Street
Savannah, Georgia 31401

Robert R. King
1858 Greystone Road, N.W.
Atlanta, Georgia 30318

Dr. Preston Russell
4617 Lansdown Place
Savannah, Georgia 31405

R. Frank Saunders, Jr., Ph.D.
Route 1
Portal, Georgia 30450

This 30th day of September, 1981.

/s/ George Busbee
GOVERNCR

ATTEST:

/s/ Tom Purdue
EXECUTIVE SECRETARY

A76

INTER-DEPARTMENT MEMORANDUM

DATE 11-3-81

TO File

FROM Mike Vaquer

SUBJECT Savannah's 250th Birthday Committee

REFERENCE

COMMITTEE MEMBERS

Preston Russell, Chairman
John Cay
David Young
Sylvester Rains
Bob Cresswell
John Hayes
Jack Allen
Walter Hartridge
W. W. Law
Curtis Cooper
Jeanne Cahn
Paul Baxter
Scott Smith
Mary Helen Ray
Malcolm Bell
Anne Jurgensen
Emma Adler
General A. Lester Henderson
Lee Meyer
Joe Thompson
Jane Feiler
Tony Dees

STATE COMMITTEE MEMBERS

B. H. Levy	Mike Vaquer
Preston Gilmore	(Preston Russell)
Betty Ellington	(John Hayes)

GEORGIA SEMIQUINCENTENARY COMMISSION
c/o GEORGIA HISTORICAL SOCIETY
501 Whitaker Street / Savannah, Georgia 31499 (912) 944-2128

reply to:

B. H. LEVY
Chairman
Savannah

CAROL MURPHY
Vice Chairman
Bremen

BETH ABNEY
Athens

KATLYN S. ANDREWS
Toccoa

JANE ARAGUEL
Columbus

HORTENSE R. ARLINGTON
Atlanta

JASPER DORSEY
Atlanta

BETTY ELLINGTON
Savannah

JANE A. FEILER
Savannah

JUDGE W. A. FOSTER, JR.
Dallas

L. PRESTON GILMORE
Savannah

WILLIAM C. HARRIS, JR., M.D.
Savannah

WALTER C. HARTRIDGE
Savannah

JOHN HAYES
Savannah

EDNA HERREN
St. Simons Island

WILLIAM H. JOHNSTON MBE
Atlanta

BILLY N. JONES
Hinesville

ROBERT R. KING
Atlanta

A. PRESTON RUSSELL, M.D.
Savannah

R. FRANK SAUNDERS, JR., Ph.D.
Portal

MRS. H. ZACK SMITH, JR.
Statesboro

PENNY STOVALL
Tucker

MICHAEL VAQUER, JR.
Savannah

H. OLIVER WELCH
Atlanta

LOIS WOOTEN
Savannah

ANTHONY R. DEES
Secretary
Savannah

GEORGIA SEMIQUINCENTENARY COMMISSION
(letterhead)

February 15, 1983

Ms. Lisa P. Mandel
Office of the County Executive
Montgomery County Government
Rockville, MD 20850

Dear Ms. Mandel:

Thank you for your letter requesting information on Georgia's Semiquincentenary Project. I apologize for the delay in replying, however we have just completed phase one of our year long celebration with the Georgia Week activities.

We have operated with a two tiered system. The State Committee provides guidance, promotion, and very limited funding, through a grants program. The State effort was funded at an extremely low level of $100,000. These funds were matched with Endowment funds and has resulted in our being responsible for grants to projects in an amount to exceed $140,000. We have also utilized approximately $20,000 for administrative expenses. We have no staff.

The City of Savannah, where I serve as the Assistant to the Mayor, also has established the Mayor's Committee for Savannah's 250th Birthday. This 40-member committee is ultimately responsible for the development and implementation of our own celebration.

Since Savannah was founded in February, we were somewhat afraid that this celebration could suffer from "Bicentennial

Syndrome" whereby everyone would think that the party was over. Nothing could be farther from the truth.

We have planned programs on a Statewide level that take place over the entire year. Some 400 programs are included in our official plans.

In Savannah we too are planning the entire year for projects. And we plan to have at least one major activity take place each month. I have enclosed a xerox of our tentative calendar of events at the State level and at the local level.

I hope this will help you out in some manner.

Sincerely,

/s/ Mike

Michael Vaquer, Jr.

MINUTES, 250th ANNIVERSARY COMMITTEE MEETING, March 22, 1982

(Excerpt)

To: Committee Members
250 Anniversary: Savannah Squares

A committee meeting was held at Ann Tatum's house on March 22nd at 7:30 p.m. John Hayes presided.

Present were: Ann Tatus, John Cay, Marmon Thompson, Preston Russell, John Drinkard, Betty Ellington, Laurie Widman, W. W. Law, Henry Moore and Paul Pessley.

The purpose of the committee is to put in motion the reclaiming of the following squares: Liberty, Franklin and Ellis, with the main emphasis on Liberty and Franklin. An effort will also be made to aid the First African Baptist Church in raising money for exterior renovation. Mr. Hayes has been working with their organization or some time. The church has been without a pastor. Mrs. Ellington will inquire as to financial assistance from other Baptist organizations. According to Mr. Hayes, the church indicated it could raise perhaps $70 to $80,000 from sale of pastor's home and possible the building behind the church, although they do not wish to part with this latter property.

...

GEORGIA SEMIQUINCENTENARY COMMISSION
MASTER CALENDAR OF EVENTS

January 25, 1983

FEBRUARY EVENTS

OFFICIAL

February 7 - 8, 1983
Colonial Town Meetings: The Impact of a Legacy
Two town meetings in the Savannah Theater will feature seven figures from Georgia's early history who have "Come to Life" again to discuss their roles in forming the colony and the impact they had on its later development
Historic Savannah Foundation, Inc.
Kacey Jones
Box 1733
Savannah, Georgia 31402
912 233-7787

...

A82

GEORGIA SEMIQUINCENTENARY COMMISSION
(letterhead)

July 28, 1982

Historic Savannah Foundation, Inc.
Ms. Kacey Jones
Assistant Director
Post Office Box 1733
Savannah, GA 31402

Dear Ms. Jones:

The Georgia Semiquincentenary Commission endorses the application of Historic Savannah Foundation, Inc. for a special initiative grant from the Georgia Humanities in connection with the planned project "Colonial Town Meetings: The Impact of a Legacy."

Our only condition in making this endorsement is that no program be held on the evening of February 8, 1983 for, as I advised you over the telephone, that would be a direct conflict with the opening session of the Symposium that is being co-sponsored by the Georgia Historical Society and this Commission.

Cordially yours,

/s/ B. H. Levy

B. H. LEVY
Chairman

BHL/sjd

A83

GEORGIA SEMIQUINCENTENARY COMMISSION
(letterhead)

July 26, 1982

Dr. Ronald Benson
Georgia Endowment for the Humanities
1589 Clifton Rd., NE
Emory University
Atlanta, GA 30322

Dear Dr. Benson:

I am writing to encourage the Board's favorable consideration of Historic Savannah Foundation's grant "Colonial Town Meetings" The Impact of A Legacy."

The Town Meetings bring to life the various personages and events that make up Georgia's colonial history. Audience participation and interaction with the colonial characters generate a positive impact of colonial history on the members of our community.

Historic Savannah Foundation will work with Massie School on this project, and having worked with both groups in the past, I am confident that the Town Meetings will be, under the auspices of these two groups, a strong vehicle for encouraging a deeper understanding of the role that past history will play in the future development of Georgia history.

Sincerely,

/s/ Preston Russell M.D.

Dr. Preston Russell, M.D.

GEORGIA SEMIQUINCENTENARY COMMISSION
(letterhead)

July 15, 1982

Georgia Endowment for the Humanities
Attention: Dr. Ronald E. Benson
Executive Director
1589 Clifton Road, N.E.
Emory University
Atlanta, GA 30322

Dear Dr. Benson:

The Georgia Semiquincentenary Commission hereby pledges to make a donation of $20,000.00 to the Georgia Endowment for the Humanities with the understanding that this donation will be matched by the National Endowment for the Humanities and under the following circumstances and conditions:

1. Of this amount $16,000.00 is for the support of grants to Georgia organizations of various kinds for projects that have been certified "Official" or "Endorsed" events of the Georgia Semiquincentenary celebration.

2. Grants totalling not less than $32,000.00 will be made by the Georgia Endowment for the Humanities to such designated Georgia celebrations and/or events.

3. Sponsors of projects receiving grants from the Georgia Endowment, assisted in part by this donation, will be expected to acknowledge the support of this Commission in all project publicity.

4. Four thousand dollars ($4,000.00) of this donation and matching funds received

by the Georgia Endowment from the National Endowment for the Humanities will be used by the Georgia Endowment for program development throughout the State.

5. Should grants of less than $32,000.00 be made to sponsors of this Commission's "Official" or "Endorsed" events on or before August 31, 1983, the unused pro rata share of the $20,000.00 donation herewith pledged will be promptly returned to this Commission.

Cordially yours,

/s/ B. H. Levy

B. H. LEVY

The foregoing Letter Agreement is hereby accepted. This 30th day of July, 1982.

GEORGIA ENDOWMENT FOR THE HUMANITIES

By: /s/ Ronald E. Benson
Dr. Ronald E. Benson
Executive Director

AFFIDAVIT OF COMMISSIONER BETTY ELLINGTON
August 1983
(Excerpt)

-51-

The most active and influential members of the Commission are also members of the Historic Savannah Foundation.

-52-

Because of the above, and because of the nature of the local Savannah 250th Birthday Committee, those with memberships in common on the Commission and the Historic Savannah Foundation controlled most of the activities during Georgia Week.

-53-

The Georgia Semiquincentenary Commission and the Historic Savannah Foundation, in terms of membership, purposes, policies, etc., are quite interwoven, and for the purposes of the organization of the local Semiquincentenary Commission events during Georgia Week were and are almost indistinguishable from each other.

_____

BETTY ELLINGTON, MEMBER

GEORGIA SEMIQUINCENTENARY

COMMISSION

(SIGNED COPY OF THIS AFFIDAVIT IS ON FILE WITH THE COURT)

sworn to me and subscribed

before me on this ____ day of

August, 1983

_____

NOTARY PUBLIC

DEPOSITION OF PROJECT DIRECTOR; EXAMINATION BY PETITIONER

(Excerpts)

Page 185:

...

A. I mean, if someone had really wanted to be heard, they could be heard in the middle of Forsyth Park, if they so chose. I was--with the exception of yourself--I was unaware that anybody had a question of such--that had to be heard by the audience in general. I think the audience would have benefited from the answers given by anybody--any one of the colonial characters, but I didn't know of any one else that had this need for the audience to hear what the answer to their question was. I think people ask questions 'cause they want an answer and I don't--well, I just said it.

...

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. _____

FRANK B. HUBBY,

PETITIONER

V.

THE HISTORIC SAVANNAH FOUNDATION
GEORGIA SEMIQUINCENTENARY COMMISSION,
MR. B. H. LEVY, CHAIRMAN;
GEORGIA ENDOWMENT FOR THE HUMANITIES,

RESPONDENTS

PROOF OF SERVICE

STATE OF GEORGIA

COUNTY OF CHATHAM

FRANK B. HUBBY, after being duly sworn, deposes and says that pursuant to Rule 28.4 (a) of this Court, he served the WITHIN PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT on counsel for the Respondents by enclosing copies thereof in an envelope, first class prepaid, addressed to:

Mr. John E. Simpson
P.O. Box 1567
Savannah, Georgia 31402

Mr. Gregory Blount
132 State Judicial Building
Atlanta, Georgia 30334

Mr. Joseph Jacobs
1000 Rhodes Haverty Building
134 Peachtree Street, N.W.
Atlanta, Georgia 30303

and depositing same in the United States mails at Savannah, Georgia, on July , 1984.

F. B. Hubby

Frank B. Hubby, Affiant

Subscribed and Sworn Before Me
This 28th day of July, 1984.

Jeanette D. Casey

Notary Public in and for
Chatham County, Georgia

Notary Public, Chatham County, Ga.
My Commission Expires 12/2 1985